Supreme Court, U.S.
FILED

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NO:----------

IN THE

SUPREME COURT OF THE UNITED STATES

JOANNA CIESZKOWSKA --
Petitioner

VS.

OFFICE OF APPEALS OF GENERAL COUNSEL NLRB --
Defendant

ON PETITION FOR A WRIT OF CENTORIARI
TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION for WRIT OF CENTORIARI

Joanna Cieszkowska
77 Cooper Street, Apt. 2E
New York, NY 10034
212-304-4722

36 pp

QUESTION(S) PRESENTED

Whether NLRB Board by it decision has inflicted injury on the petitioner for which the law affords a remedy does Federal District Court has a jurisdiction of an original suit to prevent deprivation of right so given failed to preserve by the Congress created this specific act ?.

Whether NLRB, went beyond constitutional limits decision misapplied the strict scrutiny standard in determining if Congress had a compelling interest to enact legislation designed to remedy this effects off discrimination and Unfair Labor Practice. Whether petitioner has a right to self defense, has a right to review ?

Whether the lower courts misapplied the strict scrutiny standard in determining if Congress had a compelling interest to enact legislation designed to remedy in effects of discrimination and unfair Labor Practice ?

LIST OF THE PARTIES

PETITIONER

JOANNA CIESZKOWSKA, PRO SE

77 COOPER STREET, APT. 2E

NEW YORK, NY 10034

TEL. 212-304-4722

DEFENDANT

DAWN L. GOLDSTEIN, ATTORNEY

NATIONAL LABOR RELATIONS BOARD

OFFICE OF APPEALS GENERAL COUNSEL

SPECIAL LITIGATION BRANCH

1099 14TH STREET, N.W. Ste 8600

WASHINGTON DC 20570

TEL. 202-273-2936

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IN THE
SUPREME COURT OF THE UNTIED STATES
PETITION FOR WRIT CENTORIARI

Petitioner respectfully prays that a writ of centoriari will be considered to review the judgment below.

I OPINIONS BELOW

( ) For cases from federal courts:

The date on which the US Court of Appeals for the Second Circuit decided petitioner case was January 8, 2002 (Appendix B).

A timely petition for rehearing was timely filed in petitioner case on January 22, 2002

A timely petition for rehearing was denied by the United States Court of Appeals for the Second Circuit on the following date: February 22,2002, and a copy of the order denying rehearing appears at (Appendix B).

The date on which the US District Court for the Southern District decided petitioner's case was: April 24, 2001, (Appendix E).

A timely petition for reconsideration was timely filed in petitioner case on May 24, 2001.

A timely filed petition for reconsideration was denied by the US District Court for the Southern District on June 12, 2001 (Appendix D).

II STATEMENT OF JURISDICTION.

The US Court of Appeals for the Second Circuit entered its

decision dismissing this case in the preliminary stage on January 22, 2002, and subsequently denied rehearing and rehearing en banc on February 22, 2002. Petitioner invokes this Court's jurisdiction under 28 U.S.C. & 1254.

III QUESTION(S) PRESENTED

Whether NLRB Board by it decision has inflicted injury on the petitioner for which the law affords a remedy, does Federal District Court has a jurisdiction of an original suit to prevent deprivation of right so given failed to preserve by the Congress created this specific act ?

Whether NLRB, went beyond constitutional limits, it misapplied the strict scrutiny standard in determining to dismiss the complaint. Whether petitioner has a right to self defense, whether she has a right to review ?

Whether the lower courts misapplied the strict scrutiny standard in determining if Congress had a compelling interest to enact legislation designed to remedy in effects of discrimination and unfair Labor Practice ?

IV CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Constitution First Amendment provides in relevant part: "Congress shall make no law abridging the right of the people to petitioner the Government for a redress of grievances."

US Constitution Fifth Amendment provides in relevant part: "No person should be deprived of life, liberty or property without due process of law."

US Constitution Seventh Amendment provides in relevant part: "In suits at common law, where the value exceed twenty dollars, the right of trial by jury shall be otherwise reexamined in any court of the United States, than according to the rules of common law."

US Constitution Fourteen Amendment provides in relevant part: "' 1. : nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Fair Labor Standards Act enacted by Congress provides in relevant part: (FLSA) guarantees Rest and Meal Periods of 20 minutes or less, at least one and a half of wages for any overtime over 40 hours week work.

> "Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid or as working time. These short periods must be counted as hours worked. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time The employee, must be completely relieved from duty for the purpose of eating regular meals."

Plaintiff's work schedule a lot ot times was not giving her chance for such as lunch, working days had often 15 hours.

Equal Pay Act enacted by Congress provides in relevant parts:

Upon the Equal Pay Act Sec. 206 /Section 6/ employer does not have a right to pay less than agreed for equal work on job performance of which requires equal skill, effort, and responsibility, and which performed under similar working conditions, except where such payment is made pursuant to (i) seniority system; (ii) a merit system; (iii) a system of measures for earnings by quantity or quality of production; or (iv) differential based on any factor other than sex:.....

Indeed, upon **Equal Pay Act Sec. 215 /Section 15/**

> "it is unlawful to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;"

Upon the **Equal Pay Act Sec. 217** Injunction Proceedings this courts shall have jurisdiction, for cause shown to restrain violations of section 215 of this title, including in the case of violations of section (15)(a)(2)of this title to the restrain of any withholding of payment under this overtime compensation found to be due to employees under this chapter (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain violations, by the vue of the provisions of section 255 of this title (section 6 of the EPA)

In the Civil Rights Act of 1991, provides in relevant part:
Congress determined that victims of employment discrimination were entitled to additional remedies. Congress expressly found that "additional remedies under Federal Law are needed to deter unlawful harassment and intentional discrimination in the workplace," those remedies are not clearly specify by Congress.

NLR Act provides in relevant part:
Sections 10 (e) and (f) of the Act , 29 U.S.C. &160(e) and (f) final Board order is revealable by the Court of Appeals. Section 10(f) of the NLRA allows an aggrieved party to obtain judicial review, provides in pertinent part:

> "Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States Court of Appeals... by filing such a petition praying that order of the Board be modified or set aside." 29 U.S.C.&160(f)

The Civil Rights Act of 1991 provides in relevant part:
105 Stat. 1071, &2 " additional remedies under Federal Law are needed to deter unlawful harassment and intentional discrimination in the workplace,"
Violation of Title VII of the Civil Rights Act of 1964 which does unfairly deprive her reputation for the future employment. 525U.S.70(1998) the court has found in &301 of the Labor Management Relations Act.

Section 160(b) of 29 USCA &160(j) provides in relevant

part:

"Any complaint proceeding, shall , so far as a practicable , be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the US pursuant to the Act of June 19, 1934 "(U.S.C. title 28, secs. 723-B, 723-C) (28 USCA&2072)

USC 29&153/37 clearly provides in relevant part:
that the court has jurisdiction to review decision of Board general counsel due to the fact where that face of compliant clearly indicates that Board procedures worked deprivation of constitutional rights.

The Federal Rules of Civil Procedure in Labor action provides in relevant part:
In Rule 24(a)(2) of FRCP 77ALR Fed 201 and 59ALR ed.364 " employee has a right to intervene if federal judicial proceeding concerning labor arbitration, and court may consider that under fact that Board procedures had been inadequate to uncover the acts relevant to his charge."

Freedom of Information Act F.O.I.A. provides in relevant part: "Requires an information to be disseminating to the public and establishing guidelines for their disclosure."

Supreme Court provides in the relevant cases:

- **The Right to trial upon the First Amendment**

Constitution:

In Bill Johnson's Restaurants v. NLRB " Supreme Court states :"we recognized a right under the First Amendment to seek redress of grievances in state courts."

In California Morot Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510, 92st Ct.609,611 L.Ed.2d642 (1972). Supreme Court states: " Congress has not completely preempted the right to sue in state court for defamation that occurs in connection with labor dispute. Linn v. Plant Guard Workers, 383 U.S53,86S.Ct. 657, 15 L.Ed. 2d 582 (1966)

- Standards to which the NLRB must conform upon NLRB Act:

In Interstate Commerce Comm'n v Louisivlle & Nashville R. Co., 227 U.S. 88, 91 US Supreme Court defines the standards as a follow.

> " The Board must receive evidence and make findings. The findings as to the facts are to be conclusive, but only if supported by evidence. The order of the Board is subject to review by the designated court, and only when sustained by the court may order be enforced. Upon that review, all questions of the jurisdiction of the Board and the regularity of its proceedings, a questions of constitutional right or statutory authority, are open to examination by the court. We construe the procedural provisions as affording adequate opportunity to secure judicial protection against arbitrary action in accordance with the well settled rules applicable to administrative agencies set up by Congress the aid in the enforcement of valid legislation. "

- **Remedy when NLRB made decision in an excess of it power and contrary to statue:**

In Leedom v Kyne (1958) 358 US 184, 3 L Ed 210, 79 S Ct 180, 43 BNA LRRM 2222, 36 CCH LC P 65085, Supreme court held that a District Court had a jurisdiction to strike down an order of the Board made in excess of its delegated powers and contrary to a specific prohibition of the National LRA.

In Wight v. Universal Maritime Service Corp. et al the Supreme Court has found in &301 of the Labor Management Relations Act, 1947. That presumption does not extend beyond to reach of the principal rationale that justifies it ie., that arbitrators are in a better position that courts interpret the terms of CBA . Arbitration clause is very general.

V STATEMENT OF THE CASE

Petitioner was wrongfully dismissed from work just without a cause with illegal disciplinary action, discriminatorily selected, for dismissal upon her falling physical condition and open disagreement toward the employer's abusive practice of unhealthy work condition and abusive wages payments practice. She filed an unfair labor practice charge with General Counsel office of Appeals of the National Labor Relations Board subsequently requesting an Arbitration.

By a letter dated August 31, 1998 General Counsel, issued a decision denying the appeal without a hearing and investigation, substantially for the undocumented reasons set forth in the Regional office. (Appendix G)

The Review of the Board was without a basis of the law Therefore NLRB General Counsel did not conduct any investigation. It is clear that the manner in which the General Counsel determined to investigate was breaking the rule of law.

1. Plaintiff brought her action pursuant to United States Constitution, Federal Law, Common Law. Jurisdiction is specifically conferred on this Court by 42 U.S.C. Sec. 2000E-5. Equitable and other relief are also sought under 42 U.S.C. and other relief are also sought under 42 U.S.C. Sec 2000e-(5). Jurisdiction is also based on 42 U.S.C. Sec 1981 et. seq. and 28 U.S.C. Sec 1331, 1343 Accordingly to 190, 320, 365, 660, 710, 895 Section of Federal Law.

2. Plaintiff is a naturalized citizen of the United States and resides at: 77 Cooper Street, Apt. 2E, New York, NY 10034, is reached under the phone 212-304-4722.

3. Defendant is a General Counsel National Labor Relations Board office and is located at: 1099 14th Street, N.W. Washington DC 205570, Dawn Goldstein - counsel will argue, is reached under the phone 202-273-2936.

4. Plaintiff was abruptly wrongfully dismissed from the job for Gray Line with the allegations and unfair accusations of falsifications of documents six time sheets (two hours time,) therefore she successfully contested the legitimacy of her termination, successfully contested discriminatory thefts of her payments in Small Claims Court proving systematic abuse and theft by the employer, and has the potential of success in litigating negligence of NYHR and compensation for the lost of health and of her employment. The decision of Unemployment Insurance Judge distinguished petitioner's complaint and it was final decision which was not contested

by the employer. (Appendix U) The Small Court distinguished the evidence of the abuse payments practice violating Equal Pay Protection Law, therefore 5% percent protection of CPA nor minimum wage protection do not apply to her case (Appendix J). The Inspector General of NLRB considered her complaint as a valued.

It is found that plaintiff was covered by her employment agreement, therefore she has been unjustly suspended or dismissed, and her guarantee benefits were severely unfairly abused, such employee shall be reinstated with full seniority rights, and shall be compensated for this wage losses resulting from her suspension or dismissal. The employment agreement guaranteed at least two times smaller wages than on the free market for the same work in exchange for guaranteed job stability and healthy work condition and health benefits. Under the same contract employee is obligated to work usually at least 10 hours daily generally long days start the job at 5 a.m. when necessary and finished at night when necessary. .

Upon her contract

> " Before the Company brings in an employee on formal charges at a grievance hearing, the employee and the Section Chairman will be notified of the general charge against the employee forty-eight (48) hours prior to the grievance hearing. Affidavits or signed statements may be offered in evidence by all parties at the disciplinary hearing. (they were never offerred)"

5. General Counsel Office of Appeals NLRB mishandled petitioner's complaint.

6 The Lower Courts dismissed the case in the

preliminary stage as a follow:

- On August 30, 2000, Joanna Cieszkowska and plaintiff pro se, untutored in law and born in a foreign origin, submits to the Federal Court Southern District of New York, a complaint against the Office of Appeals of General Counsel of the NLRB, stating an improper investigation and processing of her claim as well as tampering access to her file by the defendant. Petitioner is asking for a Jury Trial. (01-CV-3425)
- On April 24, 2001, Honorable Judge Michael B. Mukasey dismisses the complaint in the preliminary stage without due process, on the grounds that the complaint is filed forma pauperis and accordingly " is failing to state a claim upon relief may be granted." **(Appendix E)**
- On May 11, 2001, petitioner submits Motion for Reconsideration and is again asking Federal Court for a setting aside the judgment and proceed for fair trial.
- On June 12, 2001, Honorable Judge Michael Mukasey ignores a Fed. Rule Civ P no 59 and instantly dismisses petitioner's motion. (Appendix D)
- On August 29, 2001, petitioner files the appeal to the U.S. Court of Appeals for the Second Circuit, Do No. 01-6191. -
- On January 8, 2002, Honorable Court of Appeals dismisses plaintiff's appeal in the preliminary stage and states that on the erroneous grounds, stating that NLRB " has unrevieable discretion to refuse to institute an unfair labor practice complaint." (Appendix C)
- On January 22, 2002 plaintiff files an above submits Motion for Reconsideration on the decision on the ground to her right to fair treatment.

On February 22, 2002, US Court of Appeals for the Second Circuit ultimately dismisses the complaint (Appendix B)

7. The grounds of the Honorable Judges of the United States Court of Appeals for the Second Circuit decision from January 8, 2002 cit defendant " has unrevieable discretion to refuse to institute an unfair labor practice complaint" does not apply to the case due to the defamatory and unfair statement of the original NLRB decision from August 31, 1998, where defendant untruly states that petitioner "had intentionally falsified her time sheets numerous times" (Appendix G) In opposite, petitioner did not falsify her time sheets nor anything in her life. Accordingly General Counsel of NLRB brought the law by dismissing the appeal on the grounds which contradicted with the original not appealed by the employer decision of Administrative Judge in the State of New York Unemployment Board. January 26, 1998, which clearly states that there is no any competent evidence proving any petitioner's misconduct, that she did not falsify her time sheets because the "claimant wrote the actual times she started and ended work." (Appendix U) **The above issued decision from August 31, 1998, unjustly injures petitioner professional reputations and harms her professional life, which should not happen without just a cause.** General Counsel of NLRB violates the rule of law by accusing petitioner with charges which she did not commit. (Appendix F)

8. Upon the rule of law, petitioner has a right: to present her case by oral and documentary evidence and to conduct an examination as may be required for full and true disclosure of the facts that violated the law and desist from

unlawful acts found and take action to remedy effects. This never happen due to preliminary dismissal.

9. The Honorable Courts may consider the special circumstances of litigant who is untutored in the law and pro-se plaintiff may be held to a lower legal standard. In opposite, Honorable Court did not consider this fact at all. Upon the rule of law, the fact that petitioner's lack of ability to investigate alone does not due to the fact that defendant control all the information, yet failed to disclose it before making unfounded accusations. Due to the fact that defendant failed to avail itself of this exclusive information it could not invoke the qualified privilege to obtain a dismissal of the plaintiff's claim.

10. During the so called " primary investigation", NLRB - defendant failed to contact the petitioner even once as required to support a duty of fair process. In opposite NLRB unlawfully never responded to the petitioner's request and never disclosed any explanation nor evidence of its decision. Upon the FOIA, defendant is obliged to disclose the information. By a letter from September 18, 1998, NLRB officially informed petitioner that her file does not contains any evidence. **(Appendix R)**

11. Due to a clear conflict of interests, Acting Director of Office of Appeals Ms. Deborah Yaffe should not be assigned to handle petitioner's complaint upon the fact that Ms Yaffe, studied law at the same time and in the same George Washington University with Mr. Bernard Flateman, company's legal counsel responsible for relations with NLRB and brother of the Gray Line New York President Mr. Charles Flateman. This fact clearly disqualify Acting Director Yaffe from serving as an impartial

prosecutorial litigator of NLRB in this case and disqualify her decision as a valued. NLRB violates petitioner's right to the impartial investigation.

12. In fact, upon the NLRB Procedural Rules, Defendant had no right to issue two contradicted decisions October 14, 1998, (Appendix H), October 26, 1998 (Appendix I) and deny petitioners right to file request for reconsideration, nor misconstruing her petition as a request under FOIA

13. Additionally, defendant NLRB, never responded to real legitimate issues of violations of the Labor Law by the employer, living Petitioner to the Courts. In fact, NLRB did not respond to legitimate issues of systematic wages discrepancies, nor to the health abusive practice committed by the employer therefore General Counsel did not proceed a fair investigation of the case.

14. Before the decision inconclusive or ambiguous evidence should be scrutinized carefully. Such a practice should be applied to claims considering the issues of employee misconduct.

15. Plaintiff's motion is based on honesty and states that National Labor Relations Board did not act in good faith therefore this high authority should be accountable for the wrong doing and damages of her life.

a . Petitioner worked for the employer three consecutive full seasons (three years) in her profession and contributed a great deal to the corporation. The imputation of crime was unfair and therefore wrong and defamatory due to the fact that she was reliable, dependable and easy to do business with employee. As a successful graduate from prestigious Columbia University petitioner who for years is an appreciated member of Guide Association, had a

potential chance to proceed a successful professional life, but her chances are clearly intentionally demoted by false statements which unfairly are damaging her character and motivation.

b. Defendant NLRB did in fact allegedly and unfairly process her complaint, violated due process, mislead and misinformed her in several occasions tampered her access to the her file and allegedly attacked plaintiff character and motivation with a defamatory statement that "probative evidence indicates that the Union made in its decision not to pursue your grievance to arbitration based on its review of the Employer's claim that you had intentionally falsified your time sheets numerous times..." This unfair decision issued by the highest labor authority was a milestone on the decisions of NYSHR and EEOC. Therefore Supreme Court of New York and EEOC granted petitioner with benefits of the doubt.

c. Those venues were seriously considered by Inspector General of NLRB David Zielinski who requested the investigations on the case. Unfortunately his request was ignored by the NLRB Counsel.

d. General Counsel NLRB allegedly ignored the significant facts: - Among 58 guides working this time for Gray Line, only 12-15 were female lecturers. Petitioner was dismissed from work on December 12 1997, fired in January 13, 1998. Continuously to today, from this small group: Joanna Cieszkowska- plaintiff, Iria Boden, Maria Tejada, Gwen Strum, Selma Dukie, Rebecca Irving, and Tommy Gatling were dismissed from work as well. Additionally, Judy Phillips died from liver cancer in January 1998, Judy LaBoy female driver died from pancreatic cancer in March

1998. Gabby Ioanid destroyed her throat because of the fall in the bus. Ronnie Jennifer was hospitalized for severe asthma and she is on disability, Natalie Trosten had two serious surgery saving her life and removing cancer. Petitioner has a severe back injury. Entire group represents the same age range of working for Gray Line female guides.

Upon the contract time of drivers do not comply to the time of lecturers due to the fact that they have a different work schedule and requirements. The issue of drivers time sheets should not be consider at all. Guides are threaten as a "assigned" for the purpose of subsequent work hookups and therefore paid straight through. Additionally employer and union representative brought different drivers time sheets. For three seasons during the three consecutive years, accordingly petitioner worked on the same pace and nobody had any suggestions that her time sheets were incorrect, she usually was signed out by dispatcher on duty. In opposite in the group of female workers petitioner was given maximum working days, the largest amount of work, due to the fact that she never refused to work. Accordingly she was no second or third among the all guides. Petitioner simply worked a lot, as much as possible. She was fired in the busiest time of season where the city is handling million tourists a day which creates a special situations in the city. Accordingly - " lecturers shall be expected to perform duties as are now being expected to perform such a duties as are now being customarily performed by the lecturers. " Guides time sheets should consider also **Travel Time**. Upon the agreement: On occasions lecturers perform sightseeing work which does not require them to report at their dispatch point. ..... at this case. lecturers are entitled to

compensation for the time in which takes them to get to the terminal upon completion of a tour. The amount of time which lecturers have claimed for this is 15 minutes for west side hotels, 30 minutes to east side hotels, 45 minutes for the World Trade Center/Battery Park area. Since the Company does in fact require paperwork be submitted on a timely basis, it seems appropriate that the lecturer be compensated for travel time when he does in fact submit paperwork to the dispatcher or to the slot.

Upon the contract agreement

" Before the Company brings in an employee on formal charges at a grievance hearing, the employee and the Section Chairman will be notified of the general charge against the employee forty-eight (48) hours prior to the grievance hearing. Affidavits or signed statements may be offered in evidence by all parties at the disciplinary hearing.

Within six days after the date of formal hearing is concluded, a decision will be handed down by Company and written notice shall be sent to or delivered to the Section Chairman.

If it is found that an employee covered by this agreement has been unjustly suspended or dismissed, such employee shall be reinstated with full seniority rights, and shall be compensated for this wage losses resulting from his suspension or dismissal.

Employees in such a cases shall be paid not less that the average of their earnings for the five days of previous to the day of suspension."

16. **Plaintiff successfully proved illegitimacy of her abrupt termination and by her employment. The decision**

of Unemployment Insurance Judge from February 26, 1988, clearly distinguished petitioner innocence. The decision was final and never contested by the employer. (Appendix U)

The NLRB decision of General Counsel contravenes with he decision of Unemployment Insurance Judge and with the contract agreement Ms. Deborah M.P. Yaffe, Acting Director Office of Appeals NLRB should not be responsible for petitioner complaint, nor she was able to issue an impartial judgment. She clearly invested to much trust in the employer. Ms. Yaffe had not right to target plaintiff's reputation. Ms. Yaffe never contacted petitioner with any question nor informed me about the on going process or investigation of appeal. Her decision is unjustly unfair and defamatory.

17. NLRB is tampering information and is not letting petitioner to check her file. This fact clearly violates Freedom Information Act and petitioner right to discovery therefore

18. General Counsel office of Appeal NLRB had not right to send to contradicted decisions from October 14, 1998 and October 24, 1998, in significantly short time duration and to decide at the same time that petitioner does and does not have a right to reconsideration without significant explanation. Office of Appeal NLRB never issued any explanation, nor responded to petitioner's request.

18. NLRB never fulfill its obligation to inform petitioner about her rights. In opposite, on several occasions Counsel intentionally mislead and misinformed an inexperienced petitioner and send her reconsideration request to Office of Information. She was improperly advised about due process rights of review General Counsel decision and her request

was improperly construed as a request under the Freedom of Information Act.

19. Gray Line employer systematically failed to pay at least one and a half time of overtime for more than 40 hours a week, failed to me contract's benefits like lunch time meal allowance (small $4), pay lost lunches. Accordingly this specific improper garnishment (larceny) of plaintiff's wages are not asserted by the Consumer Protection Act, but rather violated the EPA right to equal pay and clearly brought to the court attention a significantly high number of incidents in this matter which states an obvious discrimination.

20. NLRB did not consider the fact that Gray Line systematically abused petitioner's payroll. Throughout the three seasons of employment, there were usually small sums of few dozen dollars of weekly discrepancies. Eventually, in 1997, employer issued a check for $260 for the last six weeks of 1996 work in the same time expressing its big unhappiness that the owed wages had to be paid. Accordingly, the problem continued through the whole season of 1997 on the same systematic weekly basis. Although Gray Line send check for additional $100 for unpaid meal allowance yet still, in the 1998 there were still wages in question due to the erroneous systematic computer payroll counting. In consequence to the lack of response to her wages in question, on December 31, 1998, petitioner filed an official claim no 909NSC98 to the Civil Court of New York, Division of Small Claims and by the stipulation of settlement reached on March 5, 1999, employer paid to the petitioner $500. It was a clear discriminating fact that Gray Lines computer payroll system systematically did not

count the overtime hours, lunch time, meal allowance, lost lunches due to the city traffic as well as any other benefits. This was an assaulting employer' attitude, showing clearly a lack of respect. In fact it was a systematic abuse of the civil rights quaranted by the Federal Law as well as violation of the employment agreement. Moreover, it should also be submitted that the Fair Labor Standards Act (FLSA) establishes Wage garnishment Law, which prohibits a theft of salaries.

20. If a relief is not granted, plaintiff will be irreparably denied rights to the self defense.

VI REASONS FOR GRANTING THE WRIT

As a direct and proximate cause of her being fired by Gray Line, petitioner has suffered and will continue to suffer a substantial loss of earnings to which the otherwise would have been entitled.

As a further direct and proximate cause of her being fired by Gray Line, petitioner has suffered damage to reputation and unfair harm to her professional career. She also , experienced a physical lost of health.

NLRB is obliged: to: an equal fair procedures, to an equal treatment and should obey the Rule of Law. In handling petitioner's case, NLRB Agency goes entirely beyond its statutory mandate, violates its own procedures, fails to provide an affected party due process of law. Therefore the original case should be reopen for future review.

NLRB ignored the merits of the case which clearly were upheld by the Unemployment Board and Small Claim Court. The agency ignored the merits of the loss of health

upon the harsh working condition, the issue which up to today is consider by Workers Compensation Board. NLRB clearly violated petitioner's due process rights mislead and misinformed petitioner in several occasion, therefore it did violate petitioner's constitutional rights NLRB unlawfully denied petitioner's right to file motion for reconsideration.

LMRA does not disable state courts from interpreting terms of collective agreements. Employer had no right to abruptly dismiss plaintiff from work, to fire her with criminal offense without any provided evidence and documentation. .

The above petitioned decision of the US Court of Appeals for the Second Circuit, contravenes with the US Constitution, The First, Fifth Seventh and Fourteen Amendments of the United States Constitution to limit power of the federal state governments to discriminate.

Historically, since the enactment of the FSLMS in 1979, the Office of the General Counsel has granted only about 3-5% of the appeals of Regional Director's dismissal of unfair labor practice charges- a significantly small number of appeals. The complaint is sub curia suable due to the probative fact that evidence clearly constitute a prima facie NLRB wrong doing.

Defendant (NLRB) ignored controlling U.S. Supreme Court case law in mishandling petitioner's complain. The Supreme Court 's decision in Leedom v Kyne, held that a District Court had a jurisdiction to strike down an order of the Board made in excess of its delegated powers and contrary to a specific prohibition of the NLRA in direct violations with NLRA. As a sole result of the defendant's

discriminatory acts in violation of federal and state laws, petitioner has been cause mental anguish, emotional distress, loss of self-esteem, humiliation, and embarrassment.

When NLRB goes entirely beyond its statutory mandate, violates its own procedures, or fails to provide an affected party due process of law, court has a role in specifying what methods it may or may not use in finding facts or reaching conclusions of law and policy.

The First Amendment of the US Bill of Rights guarantees the American Citizen Right to petition. Accordingly, this privilege is supported by the Fourteen Amendment which states

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Appellant was unlawfully denied her rights to fair investigation. Petitioner was wrongfully dismissed from work just without cause and up to today there no fair trial took place.

The Fifth Amendment has an explicit requirement that the federal government not deprive individuals of "life, liberty, or property, ": guarantee that each person receive equal protection of the laws. In the employment context the right of equal protection limits the power of the federal governments. Due process protection requires that employees have a fair procedural process before they are

terminated if the termination is related to "liberty" or property interest. context the right of protection.

Upon the rule 59ALRFed733, employee has a right to intervene in federal judicial proceeding concerning labor arbitration. Exhaustion of administrative remedies as prerequisite to suit under Employee Retirement Income Security Act of 1974 (29USCA&&1001 et seq.) 54 ALRed 364.

Investigatory -disciplinary actions of the employer (petitioner was dismissed from work just without cause and the employer breach the work agreement) so to entitle employee to union representation under &7 of the National Labor Relations Act(29 USCA&157)48ALRFed 360 Dispute between labor union and public transit authority involving breach of agreement entered into pursuant to &13(c) of the Urban Mass Transportation Act of 1964 (49USCA &1609) **The claim was sufficiently meritorious to warrant Board consideration**

Plaintiff believes that if this court will not respond to any of the merits and will not proceed a prompt and fair investigation, consequently this court will violate inherent petitioner' right to fair trial. Getting to the truth is much harder than getting to the fact. FN4 the 1991 Amendment stated that one o its purposes was "to respond decisions of the Supreme Court by expanding the scope or relevant civil rights statues in order to provide adequate protection to victims of discrimination." publ. 102-166, Sec. 3(4)

Accordingly, Supreme Court has long held that unjustified discrimination based upon legally protected rights warrants an award in punitive damages.
Upon settled common law, a plaintiff establishes a prima facie (1) a defamatory statements of fact (Decision from August 30, 1998, (2) regarding plaintiff's (communicated to third party, and (4) causing injury to plaintiff's reputation. Proceeding in a suits of common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by jury shall be otherwise retried in any court of the United States, than according to the rules of common law.

The districts courts of the United States have jurisdiction, for cause shown, to restrain violations of Sec. 215. to evaluate all charges to determine whether an injunction is warranted to temporarily stop the alleged unfair labor practice unit.

The above petitioned decision of US Court of Appeals for the Second Circuit contravenes with the other circuits decisions therefore it creates legal controversy.
The US Court of Appeals of the Fifth Circuit consider independent court action to review of the decision not to issue an unfair labor practice complaint and provides:
In Bova v Pipefitters &Plumbers Local 60(1977, Ca5 La) 554F2d 226, 95 BNALRRM 2793 81 CCH LCP 13285 infra &4 the court decides that a District Court may interfere with NLRB discretion when the Board or its staff has acted in excess of its delegated powers and contrary to a specific

prohibition in the NLRBA which is clear and mandatory and when the Board's actions violate constitutional rights upon the situation when the claim was sufficiently meritorious to warrant Board Consideration.

The US Court of Appeals of the Seventh Circuit consider independent court action to review of the decision not to issue an unfair labor practice complaint and provides: In Rockford Redi-Mix Co v Zipp (1980, CA7 Ill)632 F2d30, 105 BNA LRRM 2513,89 CCH LC P12254, court consider possibility of limited review under the principle Leedom v Kyne (1958)358 US 184,3L Ed 2d210,79 Ct 180,43 BNA LRRM 2222,36 CCH LCP65085.

The US Court of Appeal for the Eighth Circuit consider an independent District Court action and provides: In Associated Builders & Contractors, Inc etc. v Irving (1979, CA4 Md)610 F2d1221, 103 BNA LRRM 2367, 88 CCH LCP 12070, stated that judicial review is sometimes available where an agency's failure to act turns as a mistake of law, the court stated that such action by the Board is in excess of the Board's delegated powers and thus subject to judicial review by way of direct abuse of it. Court held that a District Court may interfere with he discretion when the Board or its staff had acted in excess of its delegated powers in contrary to a specific prohibition in the NLRA which is clear and mandatory. The court further stated that a District Court may interfere with such discretion in order to correct a deprivation of constitutional rights brought about by Board procedures when there is a substantial

showing on the face of the complaint that such violation existed.

The US Court of Appeal for the Ninth Circuit consider an independent District Court action and provides:

In Jacobsen v NLRB (1941, CA3) 120 F2d96, 8BNA LRRM 598,4 CCH LC P 60501, the court noted that the jurisdiction of the Board is not a compulsory jurisdiction, and that the Board does not have to cause a complaint to be issued against an employer or proceed to prohibit any unfair labor practices complained of. The court stated that the course to be pursued rests in the sound discretion on the Board and is the concern of expert administrative policy, and such a discretion is not a legal discretion at least insofar that upon the abuse of it , the Courts of Appeals might compel the Board to issue a complaint. The court observed, however, that once the Board takes jurisdiction of a cause and enters a final order dismissing the complaint, the courts have jurisdiction to review that order under 29 USCA &160(f)

The court consider the possibility of judicial review of General Counsel's decision where judicial In Southern California Dist. Council of Laborers etc. v Ordman (1970, CD Cal) 318F Supp, 75 LRRM 2380, 64 CCH LC P11243. the court took the position. in which Board failed , due to error of law, to consider the merits of a petition for the issuance of an unfair labor practice complaint, a court may compel the Board to consider the petition on the merits,

since a purely legal question is distinguishable from questions of administrative policy requiring the special expertise of the Board's General Counsel. intervention is permitted to prevent the General Counsel from taking action in violation of express statutory commands of the NLRA. **The US Court of Appeal for the District DC consider an independent District Court action and provides:** In Terminal Freight Handling Co. v Solien (1971, Ca8 Mo) 444 F2d699, 77 BNA LRRM 2625 65 CCH LC P 11818, cert den. 405 US 996, 31 L Ed 2d 465, 92 S CT 1246, 79 BNA LRRM 2803,67 CCH LC P12508, the court acknowledged that an NLRB decision not to file the complaint may be reviewed in an independent District Court action and consider the fact that court has the power to compel the NLRB to issue, or at least reconsider issuing , an unfair labor practice complaint.

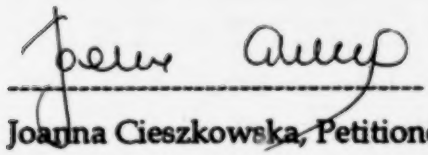
Finally: in Rintone v. Southern Bell Tel. & Tel. Co. C.A.11(Fla.) 1989, 865 F2d 1220 court unanimously decided that LMRA do not preempt law consider public violation and common law. state regulations of health and wrongful dismissal when the employee;'s claim is not intertwined with any provision of the collective agreement.

The above petitioned case was dismissed in the preliminary stage, accordingly the above case was not heard by the judge nor subjected to the preliminary procedures discovery right as a tantamount to the cases merits, therefore the faith argument is not accountable and is leaving the responsibility on District Court to adjudicate on merits.

CONCLUSION

The petition for a writ centoriari should be granted.

Respectfully submitted,



Joanna Cieszkowska, Petitioner Pro Se

date: May 23, 2002, New York, NY

APPENDIX

Supreme Court, U.S.
FILED

02 237 MAY 23 2002

OFFICE OF THE CLERK

NO:----------

IN THE

SUPREME COURT OF THE UNITED STATES

JOANNA CIESZKOWSKA ----

PETITIONER

VS.

OFFICE OF APPEAL GENERAL COUNSEL NLRB --
DEFENDANT

ON PETITION FOR A WRIT OF CENTORIARI TO THE

UNITED STATES COURT OF APPEALS FOR THE SECOND DISTRICT

Appendix for WRIT OF CENTORIARI

Joanna Cieszkowska
77 Cooper Street, Apt. 2E
New York, NY 10034
212-304-4722

56 pp

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INDIV PROSE

NA 2

Proceedings include all events.

01-6191 Cieszkowska v. Office of Appeals of, et al

Official Caption 1/

Docket No. [s] : 01-6191

JOANNE CIESZKOWSKA,

Plaintiff -Appellant,

v

OFFICE OF APPEALS OF GENERAL COUNSEL

and NATIONAL LABOR RELATIONS BOARD,

Defendants- Appellees

Authorized Abbreviated Caption 2/

---

s

Docket No. [s] : 01-6191

CIESZKOWSKA V OFFICE OF APPEALS OF GENERAL COUNSEL

1/ Fed. R. App. P. Rule 12 [a] and 32 [a].

2/ For use on correspondence and motions only.

Docket as of September 4, 2001 12:33 pm Page 3

INDIV PROSE

NA 2

GENERAL DOCKET FOR

Second Circuit Court of Appeals

Court of Appeals Docket #:01-6191

Nsuit: 2440 CIVIL RIGHTS - Other Filed: 8/29/01

Cieszkowska v. Office of Appeals of, et al

Appeal from:U.S. District Court SDNY

Case information:

1) Civil

2) USA as party

3) none

Lower court information:

District: 0208-01:01-cv-3425

APPENDIX A (page 3 of 3)
Official US Court of Appeals For the Second Circuit Record of the case no 01-6191

Trial Judge: Michael B. Mukasey, Chief Judge

Date Filed: 4/24/01

Date order:/judgment: 6/12/01

Date NOA filed: 8/13/01

Fee Status: due

Prior cases:

None

Current cases:

None

Panel Assignment:

Docket as of September 4, 2001 12:33 pm Page 1

S.D.N.Y.

01-CV-3425

Mukasey, J.

APPENDIX B (page 1 of 1)
Dismissal of the US Court of Appeals for the Second Circuit from 02 - 22 - 2002, (01-6191)

ORDER

Before : Hon. Guido Calabressi, Hon F. I. parker, Hon. Barrington D. Parker, Circuit Judges

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

Seal USC of Appeals
FILED
FEB 22 2002
Roseann B, Mackechnie, CLERK
SECOND CIRCUIT

FEB 22 2002 FOR THE COURT
---------- ROSEANNE B. MACKECHNIE, Clerk
Date **By s" / /**

Artur M. Heller, Adminsitrative Attorney

APPENDIX C (page 1 of 2)
Dismissal of the US Court of Appeals for the Second Circuit from 01- 08-2002, (01-6191)

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United Courthouse, Foley square, in the City of New York, on the 8th day of January two thousand and two.

Present:

Hon. Guido Calabresi,
Hon. Fred I. Parker,
Hon. Barrington D. Parker, Jr.
Circuit Judges.(italics)

Court Seal **Filed JAN 8 2002**

Joanne Cieszkowska
Plaintiff-Appellant,

v. **01-6191**

Office of Appeals of General Counsel,
National Labor Relations Board,
Defendants-Appelees.

Appellees have filed a motion to dismiss Appellant's appeal for lack of subject matter jurisdiction. Because the district court correctly found that appellant did not state a claim on which relief can be granted, it is ORDERED that the motion is granted on alternative grounds, and the appeal is dismissed. There can be no judicial review of the General

Counsel's prosecutorial function. See NLRB v. United Food and Commercial Workers, Local 23, 484 U.S. 112(1987); see also Nat'l Maritine v. NLRB, 423 F. 2d 625(2d Cir.1970) (per curiam) (General Counsel "has unrevieable discretion to refuse to institute an unfair labor practice complaint")

FOR THE COURT

"s/

Roseanne B. MacKechnie, Clerk

By: Lucille Carr

USCA Order 3

JAN -8-2002

APPENDIX B

Dismissal of the US Court of Appeals for the Second Circuit from 01- 8-2002, (01-6191

APPENDIX D (page 1 of 2)
Dismissal of the US D C. Southern District of New York from 06-12- 2001, (01-Civ-3425)

(SEAL) USDC USD filed JUN 12 2001
S.D.OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

JOANNA CIESZKOWSKA :
Plaintiff, ORDER
-against- 01-CIV.-3425 (MBM)
OFFICE OF APPEALS OF GENERAL COUNSEL, :
NATIONAL LABOR RELATIONS BOARD,
Defendant

----------X

By order dated April 24, 2001, this Court dismissed plaintiff's pro se complaint pursuant to 28 U.S.C. & 1915 (e) (2) (B) (ii). Plaintiff now submits a motion for reconsideration pursuant to Rule 60(b) of the Federal RUles of Civil Procedure. Plaintiff's motion is DENIED for the reasons set forth below.

Nothing in plaintiff's instant motion justifies the setting aside of the Court's Order or Judgment. Plaintiff's motion is not based on newly discovered evidence, Fed. R. Civ. P. 60 (b) (2), or cognizable claim of mistake, inadvertence, surprise or excusable neglect, Fed. R. Civ. P. 60 (b) (1). It is well-settled that relief under Rule 60(b)(6) may be granted only in "extraordinary circumstances." See

---

Ackerman v. United States, 340 U.S. 193, 199-202 (1950); Nemaizer v Baker, 793 F2d 58, 61 (2 Cir. 1986) Plaintiff's instant motion does not present such circumstances.

Accordingly, the motion is DENIED.

SO ORDERED

MICHAEL MUKASEY
Chief Judge

JUNE 12, 2001
Dated: New York, New York

APPENDIX E (page 1 of 4)
Dismissal of the US D.C. Southern District of New York from 04 24-2002, (01-Civ-3425)

JUDGE MUKASEY
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

01CV 3425

JOANNE CIESZKOWSKA
Plaintiff, ORDER OF DISMISSAL

-against-

OFFICE OF APPEALS OF GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD,
----------X

Plaintiff, pro se, brings this action against the Office of Appeals of the General Counsel of the National Relations Board for its allegedly improper investigation and processing of her employment claims against her former employer. She seeks unspecified damages. I grant plaintiff's request to proceed in forma pauperis but dismiss the complaint for the following reasons.

FACTS

Plaintiff's claims arise out of her allegedly wrongful discharge from employment as a lecturer with Gray Line International, Inc. (1) She was accused of falsifying her time sheets. Plaintiff subsequently applied for unemployment insurance benefits and was found eligible in a decision dated February 26, 1998. Plaintiff's union, 225 TWU Union, also

held an initial hearing regarding the discharge, but decline to pursue any further action against employer, including arbitration.

On June 25, 1998, plaintiff filed an appeal of the union's decision with the National Labor relations Board ("NLRB), citing the union's lack of support. On August 31, 1998, the NLRB dismissed plaintiff's appeal stating "the probative evidence indicates that the Union made its decision not to pursue your grievance to arbitration based on its review of the Employer's claim that you had intentionally falsified your time sheets numerous times its subsequent good faith determination that tit could not prevail at arbitration." Plaintiff responded to the NLRB's decision by requesting " a copy of the probative evidence, which indicates that 225 Local did not pursue my grievance to the arbitration because of sufficient evidence of the employer." The NLRB construed plaintiff's letter as a request for all of the documents from the file under the Freedom Information Act rather than a motion for reconsideration. Plaintiff subsequently had several phone conversations with staff members of the NLRB and wrote a letter dated November 1, 1998, regarding reconsideration of the NLRB's decision. On November 5, 1998, the NLRB notified her that the August 31 decision was final since she had failed to comply with heir procedures by filing a timely motion for reconsideration. On June 3, 1999, the NLRB sent to plaintiff all of the documents in her case file which were disclosable.

Meanwhile, in December 1998, plaintiff filed a claim

against her employer in New York City Claims Court alleging that her employer owed her a sum of money for its wrongful actions. On March 5, 1999, plaintiff and her employer arrived at a settlement of $500.00. On September 9, 1999, plaintiff submitted to the Inspector General of the NLRB a petition seeking review of its procedures in her case, citing the settlement of the Small Claims Court case as proof that the agency failed to properly consider the merits of her case. On November 4, 1999, the NLRB responded to plaintiff's petition by chronicling the activities in her case and concluding hat he matter was closed. On February 14, 2000, plaintiff again wrote tot he Inspector General of the NLRB requesting that her case be reopened. In the letter, plaintiff alleged improper connection between a staff member of the NLRB who was involved in her case and her employer. The NLRB declined to reopen the case on March 7, 2000. Plaintiff now brings this action claiming that the NLRB improperly handled her grievances thereby depriving her of unspecified constitutional rights and violating the Fair Labor Standard Act ("FLSA"), 29 U.S.C.&201 et seq. which quarantees her a fair investigation.

DISCUSSION

Plaintiff has failed to state a claim against the Office of Appeals of General Counsel of NLRB. The FSLA provides no express or implied right of action to bring suits against the NLRB for claims that the NLRB failed to properly investigate or process plaintiff's grievance regarding

her employer. The underlying purpose of the FSLA is mandating minimum wage protection which are enforceable against the EEOC for failure to properly process or

investigate employment discrimination charge). Plaintiff has also failed to state a claim against the NLRB for denial of due process as the NLRB's decision did not ultimately affect plaintiff's right to seek further relief, as evident by her pending discrimination complaint against her employer. See Cieszkowska v. Gray Line New York, No. 01Civ. 0128 (LAP) (filed November 3, 2000).

CONCLUSION

Accordingly, the complaint , filed in forma pauperis under 28 U.S.C. &1915(a)(1), is dismissed to 28U.S.C.& 1915(a)(3) that any appeal from this order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED s" /

MICHAEL B. MUKASEY
Chief Judge

APR 24 2001
Dated: New York, New York

1 Plaintiff is not a stranger to this Court. On January 13, 2000, she filed an action against her employer Gray Line based on the same facts and circumstances of the instant case. That case was sua sponte dismissed for failure to state a claim upon which relief may be granted See Cieszkowska v. Gray Line New York, No. 01-Civ. 0128(LAP).

APPENDIX F (page 1 of 2)

Dismissal of the National Labor Relations Board from 08- 31-1998 (2-CB-16989)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF GENERAL COUNSEL
Washington, D.C. 20570

August 31, 1998

Re: TWU, Local 225 (Gray Line)
Case No. 2-CB-16989

Ms. Joanna Cieszkowka
77 Cooper Street, Apt. #2E
New York, NY 10034

Dear Ms. Cieszkowska:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered.

The appeal is denied substantially for the reasons set forth in the Regional Director's letter of June 1, 1998. There is insufficient evidence to demonstrate that by refusing to proceed to arbitration with your grievance, "Local 225 was supporting Gray Line's arbitrary discrimination" toward you, as alleged o appeal. Rather, the probative evidence indicates that he Union made its decision not to pursue your grievance to arbitration based on its review of the

---

Employer's claim that you had intentionally falsified your time sheets numerous times and its subsequent good faith determination that it could not prevail at arbitration. Accordingly, further proceedings herein were deemed unwarranted.

Sincerely,

Fred Feinstein
Acting General Counsel

Signature "/.../
By----------
Deborah M.P. Yaffe, Acting Director
Office of Appeals

cc. Director, Region 2

Mr. Richard Greulich, Transport Workers Union of America, Local 225, 10 Banta Place, Rm. 107, Hackensack, NJ 07601

Ms. Lisa Sisenwein, Gray Line, 1740 Broadway, New York, NY 10019.

APPENDIX G (page 1 of 3)
NLRB Letter from November 5, 1998.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF GENERAL COUNSEL
Washington, D.C. 20570

November 5, 1998
Re: TWU, Local 225 (Gray Line)
Case No. 2-CB-16989

Ms. Joanna Cieszkowka
77 Cooper Street, Apt. #2E
New York, NY 10034

Dear Ms. Cieszkowska:

This is in response to your letter dated November 1, 1998, as well as the several phone conversations with members of our staff which preceded it.

It appears that our last letter to you dated October 26, 1998, has caused some confusion. Your request fr a motion for reconsideration of our decision of August 31, 1998 by Acting Director Deborah Yaffe denying your appeal was denied ultimately. In accordance with Agency policy, letters denying appeals do not specifically mention the opportunity to file a motion for reconsideration because such option is set forth in Agency's Rules and Regulations, Section 102.19(c). Since this is a public document, as legal matter persons interested in pursuing further action are expected to

become familiar with the Agency's rules and regulations. Under that particular section, motions must be filed within 14 days of the date of the decision denying an appeal. In your case. although you filed a request for information on September 3, that request was treated under the Freedom Information Act, rather than as a motion for reconsideration since that letter did not mention any basis for reconsideration of the August 31, 1998, decision denying your appeal of your unfair labor practice charge.

The October 26 letter's reference to an appeal within 20 days was an attempt to clarify appeal rights surrounding a FOIA request for information. As explained in that letter, when requested information is not provided, the requester has 20 days in which to file an appeal to that original determination. However, since FOIA is not a discovery procedure, such a request does not delay the processing of the merits of an unfair labor practice charge or FOIA requests both filed to that decision. In sum, denial of either unfair labor practice charges or FOIA requests both have appeal rights, but there are different time periods and different considerations.

While we understand your frustration in facing unfamiliar procedures, and we recognize that two separate letters might have avoided some confusion, we have no alternative but to abide by the Agency's rules and regulations. Consequently, your underlying unfair labor practice charge is a closed case

since the appeal was denied by the August 1 letter and no timely motion was filed. But, this determination has no effect on your rights under FOIA to pursue the production of any documents you may be entitled to inspect.

Sincerely,

Fred Feinstein
General Counsel
(Signature)

By----------

Yvonne T. Dixon, Director
Office of Appeals

cc. Director, Region 2

Mr. Richard Greulich, Transport Workers Union of America, Local 225, 10 Banta Place, Rm. 107, Hackensack, NJ 07601

Ms. Lisa Sisenwein, Gray Line, 1740 Broadway, New York, NY 10019.

tb

APPENDIX H (page 1 of 2)
NLRB letter from October 14, 1998

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF GENERAL COUNSEL
Washington, D.C. 20570

October 13, 1998
Re: FOIA Appeal

Ms. Joanna Cieszkowka
77 Cooper Street, Apt. #2E
New York, NY 10034

Dear Ms. Cieszkowska:

This is in response to your telephone conversation with Mr. Robert I Tendrich of this Office, wherein you requested this Office to advise you when your appeal of a refusal to provide documents under the Freedom of Information Act(FOIA) is to be file. IT is our understanding that you filed your FOIA request on September 25, 1998, and that you have not yet been advised whether that FOIA request has been granted.

You may obtain a review of a refusal to provide documents in whole, or in part, under the FOIA under the provisions of Section 102.117(c)(ii) of the Board's Rules and Regulations by filing an appeal with the Acting General Counsel, National Labor relations Board, Franklin Court Building,

1099 14th Street, N.W., Washington, DC 20570, and a copy of the appeal with the Regional Director within 20 days (excluding Saturdays, Sundays and legal public holidays) from receipt of that letter. Any appeal should contain a complete statement of the reasons upon which it is based. It rust that this answer your inquiry.

Sincerely,

Fred Feinstein
General Counsel
(Signature)

By----------
Yvonne T. Dixon, Director
Office of Appeals

cc. Director, Region 2

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF GENERAL COUNSEL
Washington, D.C. 20570

October 26, 1998
Re: TWU, Local 225 (Gray Line)
Case No. 2-CB-16989

Ms. Joanna Cieszkowka
77 Cooper Street, Apt. #2E
New York, NY 10034

Dear Ms. Cieszkowska:

This is in response to your letter dated October 14, 1998, wherein you request an "official extension of... time" in order to file a "reappeal" of the above-captioned case.

To clarify the situation and the different appeal procedures, your letter dated September 3, 1998, to the Office of Appeals, was deemed a request for information under the Freedom of Information Act (FOIA). Hence, it was forwarded to the Freedom of Information Office and thence, to the Regional Office, where the information you seek is

located. You will have 20 days from the date of the Regional Director's decision under FOIA in which to appeal that decision, should you decide to do so.regarding the denial of your appeal on the merits of the captioned case, Section 102.9(c) of the National Labor Relations Board Rules and Regulations provides in pertinent part:

> A motion for reconsideration of the decision must be filed within 14 days of service of the decision, except as hereinafter provided, and shall state with particularity the error requiring reconsideration.
> A motion for reconsideration based on newly discovered evidence which has become available only since the decision on appeal shall be filed promptly on discovery if such evidence.

Therefore, inasmuch as your appeal was denied on August 31, 1998, in order for a motion for reconsideration to have been timely filed, it would had to have been received in the Office of Appeals no later than September 14, 1998. The fact that you have requested information under the FOIA does not alter that rule. Since a request under the FOIA is not discovery proceeding, such a request does not serve to stay any other litigation or investigatory processes and does

not constitute a basis for postponing resolution of your motion. See, e.g., Renegotiation Board v. Bannercroft Co. 4115 U.S.1,22 (1974); NLRB v Robbins Tire & Rubber Co., 437 U.S.214, 242 n.23(1978). Accordingly, your request is denied.

Sincerely,
Fred Feinstein
General Counsel
By--(s" / ----------
Yvonne T. Dixon, Director
Office of Appeals

cc. Director, Region 2

Mr. Richard Greulich, Transport Workers Union of America, Local 225, 10 Banta Place, Rm. 107, Hackensack, NJ 07601

Ms. Lisa Sisenwein, Gray Line, 1740 Broadway, New York, NY 10019.

APPENDIX J (page 1 of 4)

Stipulation of Settlement of the Small Claims Court from 02- 24-1999, (SCNY9092/98)

Court of the City of New York

Index No. SCNY9092/98

JOANNA CIESZKOWSKA
Claimant(s), Plaintiff(s)
against
GRAY LINE NEW YORK
Defendant(s)

STIPULATION
OF SETTLEMENT
and
AFFIDAVIT UPON
DEFAULT

STIPULATION OF SETTLEMENT

It is hereby agreed and between the parties that this claim is settled for the sum of $500.00, to be paid by GL BUS INC., on or before 3/5/99, to JOANNA CIESZKOWSKA at: 77 Cooper St. Apt. 2E, New York, NY 10034. or as follows:

Upon such a payment all parties shall be released from liability to each other concerning the matters in this dispute.

In the event Debtor files to make payment as agreed to above, Creditor, upon completing the Affidavit below

---

settling forth such default, shall be entitled to (SELECT ONE OPTION) (selected option)

a) enter Judgment, without further to the Debtor, for the amount (agreed above) less any payment made together with interest and disbursements.

Joanna Cieszkowska

----------date Feb. 24, 1998----------

Signature" / /

Lisa Sisenwein

----------date Feb. 24,1998----------

Signature" / /

APPENDIX J (page 3 of 4)

Stipulation of Settlement of the Small Claims Court from 02- 24-1999, (SCNY9092/98)

Ms. Lisa Sisenwein, Director
11740 Broadway
New York, NY 10019
Fax: 212-247-6956

Date: January 20, 1998

This letter serves as a confirmation that on January 13, 1998, you personally received from me specific details of my claim.

I claim that for my working season of 1997 as a lecturer that Gray Line owes me $628.83 for the season 1997, for nine weeks, Because I submitted an account to Union representatives and I had no answer I am sending this calculation to Labor Department. As a lecturer, working full time for three seasons and belonged to the Group A, I suppose to be paid a rate $11.70/hour, after 40 hours the overtime should be counted 1.5 x regular rate. Enclosed please find nine weekly calculations for the season 97

Every two or three months lecturer has regular assignment. Bid which is giving him a permanent schedule.

Bid #2 covered my April and May schedule and it was a guarantee:
Monday(9.5 hg), Tuesday(9.5h), Wednesday (11h), Thursday(7h), Friday (off), Saturday (off)Sunday(7h).
Bid #16 covered my June, July, August schedule and it was guarantee:

Monday(6hg), Tuesday(11h), Wednesday (9.25h),
Thursday(off), Friday (off), Saturday (5.25)Sunday(9.25h)
Bid #30 covered my November December schedule and it was guarantee:
Monday(10.75hg), Tuesday(7.75h), Wednesday (off),
Thursday(off), Friday (9.75h), Saturday(9.25)Sunday(8.75h)

Enclosed please find a copies of my hours stubs and copies of my checks:

Case#1	week end 04/19/97	$41.93
Case#2	week end 04/20/97	$30.93
Case#3	week end 05/24/97	$74.74
Case#4	week end 05/31/97	$29.83
Case#5	week end 06/21/97	$98.45
Case#6	week end 06/28/97	$32.85
Case#7	week end 07/05/97	$86.69
Case#8	week end 07/12/97	$103.80
Case#1	week end 11/08/97	$74.26
Total	Company owes me	**$572.83**

Additionally because of the unexplained mistakes company owes me $56(fifty six dollars) for meal allowance, for the days: April 17, 20, 24,; May 18, 25, 27, 29,; June 21; July 29, September 28; October 13; December 9, 12.

Sincerely, "s/ /

Joanna Cieszkowska

CC: CIVIL COURT, OF THE CITY OF NEW YORK, SMALL CLAIMS,

 # Index No: 9092 NSC 98

APPENDIX K (page 1 of 1)

Gray Line letter from January 24, 1997

GRAY LINE LOGO

GRAY LINE NEW YORK LOGO

January 24, 1997

Ms. Joanna Cieszkowka
77 Cooper Street, Apt. #2E
New York, NY 10034

Janaury 24, 1997.

Dear Joanna:

We have received he information that you provided in regard to your payroll complaint. It is clear that an error was made.

A check in the amount of $260.69 has been issued to you.

We are sorry for any inconvenience you may have experienced because of this mistake.

Sincerely, (Signature)
Lisa Sisenwein
Human Resources Manager

cc:S. Gall, R. Greulich

1740 Broadway, New York NY 10019-5566 212-397-2620
Fax 212-247-6956 Member NY Convention & Visitor Bureau ASTA ,ABA,. MPI, NYSAE, HSMA, TIA, ASI

GRAY LINE LOGO
GRAY LINE NEW YORK LOGO
January 15, 1998
Ms. Joanna Cieszkowka
77 Cooper Street, Apt. #2E
New York, NY 10034

Dear Joanna:
I received you inquiry concerning meal allowance that you believe that you have not be paid. I just want to remind you of the contract provisions in regard to this matter. The contract states that "Lecturers performing Double Decker service of 7 or more hours with one year or more of service will receive a $4.00 peer day meal allowance."
The following is a breakdown of the dates in question:

4/9/97	Paid(see check stub)
4/14	Worked 5.58 hours
4/14	Owe $4 4.00
4/15	3.5 hours Double Decker work
4/16	Owe $4 4.00
4/17	Worked 5.75 hours
4/20	Worked 5.58 hours
4/22	Owe $4 4.00
4/23	
4/24	Worked 5.57 hours
4/27	Owe $4 4.00
4/28	Owe $4 4.00

5/4/97	Worked 5.50 hours
5/8	Worked 5.50 hours
5/11	Worked 6.14 hours
5/18	Worked 6 hours
5/19	Paid $4.00 (see check stub)
5/21	Owe $4 4.00
5/25	Worked 5.50 hours
5/26	Owe $4 4.00
5/27	Worked 5.66 hours
5/28	Owe $4 4.00
5/29	Worked 6.91 hours
6/3/97	Owe $4 4.00
6/4	Owe $4 4.00
6/10	Owe $4 4.00
6/14	Did not do any Double Decker work
6/18	Owe $4 4.00
6/21	Worked 6.67 hours
6/30	Did no do any Double Decker work
7/8/97	
7/28	6.67 hours Double Decker work
9/7/97	Owe $4 4.00
9/8	paid $4.00 (see check stub)
9/14	Worked 6.50 hours
9/21	Worked 6.25 hours
9/22	Owe $4 4.00
9/27	6 hours of Double Decker work
9/28	Worked 6 hours
9/29	Owe $4 4.00

October 8, 1997

10/9 2.75 hours of Double Decker

10/12 Paid 4.00(see check stub)

10/19 Owe $4 4.00

10/20 Owe $4 4.00

10/22 Did a service order - not regular DD work

10/23 Owe $4 4.00 Paid $4.00 (see check stub)

10/24 Owe $4 4.00

10/28 Did not do Double Decker work

November 5, 1997

11/6 Owe $4 4.00

December 1, 1997

12/7 Did not do any Double Decker Work

12/9 Did no do any Double Decker work

I have enclosed copies of your time sheets so that you verify the above information. We found that you were not paid meal allowance on 25 occasions when you should have been paid. In many cases you did no indicate DD on your time sheet and that is why you were not paid. A check for $100.00 minus standard payroll taxes will follow shortly. If you have any further questions, please give me a call at 212-397-2620 ext 203.

Sincerely, (Signature)

Lisa Sisenwein

Human Resources Manager

cc:C. Flateman

1740 Broadway, New York NY 10019-5566 212-397-2620
Fax 212-247-6956 Member NY Convention & Visitor Bureau ASTA ABA,. MPI, NYSAE, HSMA, TIA, ASI

APPENDIX M (page 1 of 2)
NLRB letter from March 7, 2000

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF GENERAL COUNSEL
Washington, D.C. 20570

MARCH 7, 2000 (stampe)

Ms. Joanna Cieszkowka
77 Cooper Street, Apt. #2E
New York, NY 10034

Re: TWU, Local 225 (Gray Line)
Case No. 2-CB-16989

Dear Ms. Cieszkowska:

This is in reply to, letter dated February 14,2000. which was addressed to the Inspector General of the National Labor relations Board requesting that your case be reopened, which has been referred to this Office for response.

This is to advise you that Assistant Director of the Office of Appeals, Ms. Deborah yaffe, neither attended Georgetown University, nor to the best of her recollection has she ever met a Mr. bernard Flateman, as alleged in your letter, or a Charles Flateman. Thus, there is no basis to support your claim that she had a personal relationship with any of the parties that would have created a conflict of interest in her handling the instant matter. As for Ms. Dixon, there is similarly no basis for finding that she acted

less than an impartial manner. A past residence in particular state would not require an official to decline to participate in cases which arise in that state.

Accordingly, and since your letter provides no other basis with which to conclude that your case was not properly considered, such case remains closed.

Sincerely,
"/ signature/
Celeste J. Matina
Assistant General Counsel

APPENDIX N (page 1 of 3)
NLRB letter from November 4, 1999

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF GENERAL COUNSEL
Washington, D.C. 20570

November 4, 1999.

Ms. Joanna Cieszkowka
77 Cooper Street, Apt. #2E
New York, NY 10034

Re: TWU, Local 225 (Gray Line)
Case No. 2-CB-16989

Dear Ms. Cieszkowska:

This is t reply to your Petition For Review of National Labor relations Procedures in the above captioned matter dated September 9, 1999, which was addressed tot he Inspector General of the National Labor relations Board requesting that y our case be reopened by this Agency, which has been referred tot his Office for response.

Our records indicate that you filed a charge with your New York Regional Office alleging that the above named union failed to pursue your grievance concerning your dismissal from work and failure to secure certain moneys due you. Following the investigation of your charge the Regional

Director refused to issue a complaint on June 1, 1998. Your appeal from that dismissal was denied by this Office on August 31, 1998, on the basis that the "probative evidence indicates that the Union made its decision not to pursue your grievance to arbitration based on its review of the Employer's claim that you had intentionally falsified your time sheets numerous times and itd good faith determination that it could not prevail at arbitration."

In your letter to this Office dated September, 1998, you indicated that you were "asking the National Labor relations Board to provide (you) with a copy of the probative evidence, which indicates that 225 Local did not pursue (your) grievance to the arbitration because of sufficient evidence of the employer." Thereafter, all of the subsequent phone calls and correspondence between you and this Office, as enclosed with your submission to the Inspector General, dated September 9, 1999, complaint about our treating your September 3, 1998, letter as a request for documents under FOIA rather has as a motion for reconsideration of our August 31, 1998, action in denying your appeal, and/or that it was incumbent upon this office to spell out the rules regarding time limits in the filing of such motions for reconsideration, in the correspondence submitted by you to the Inspector General, copies of our replies are also included which spell out our responsibilities inasmuch matters and reasons why your subsequent requests

for reconsideration of our action denying your appeal were considered to be ultimately. There is nothing more that we can add.

In the above circumstances, as we have previously advised you, we have no alternative but to consider this matter closed.

Sincerely,
Fred Feinstein
General Counsel
(Signature)

By----------
Yvonne T. Dixon, Director
Office of Appeals

cc. -Director, Region 2
-Mr. Richard Greulich, Transport Workers Union of America, Local 225, 10 Banta Place, Rm. 107, Hackensack, NJ 07601
-Ms. Lisa Sisenwein, Gray Line, 1740 Broadway, New York, NY 10019.
tb

APPENDIX O (page 1 of 2)
Letter of petitioner issued to NLRB on September 25, 1998

Joanna Cieszkowska
77 Cooper St.. Apt. 2E
New York, NY 10034

Mr. Daniel Silverman, Regional Director
National Labor Relations Board, Region 2
26 federal Plaza - Room 3614
New York, NY 10278-0104

September 25, 1998
Re: TWU, Local 225 (Gray Line)
Case No. 2-CB-16989

Dear Mr. Silwerman:

Pursuant to the National Labor relations Board Rules and Regulations, under the provisions of part 102.117(c)(2)(ii) of the Board's Rules, I am requesting from the National Labor Relations Board to provide me with a copy of the probative evidence, which indicates that 225 Local did not pursue my grievance to the arbitration because of sufficient evidence of the employer. According to Freedom Information Officer in Washington all the records of my case are located in Region 2.

Due to the fact that the obtained information is crucial for my rights to appeal, I am asking the National Relation Board Region 2 for a possible fast response. As soon as the

material will be ready, I will be able to pick-up it personally if you only let me know over the telephone. My phone no. is 212-304-4722.

I would also like to ask if possible for a copy of the National Labor Relations Act with all Official Rules and Regulations o the National Labor Relation Board. I was never provided with a complete information. Thank you for your time and cooperation I'll will be waiting for your response and for the requested materials.

Sincerely,

Joanna Cieszkowska

cc: Mr. John Hornbeck
Freedom of Information Officer
National Labor Relations Board
Office of General Counsel
1099 14th Street NW
Washington D.C. 20570

APPENDIX P page (1of 2)
Letter of petitioner issued to NLRB on September 3, 1998.

Joanna Cieszkowska
77 Cooper St.. Apt. 2E
New York, NY 10034

Ms Deborah M.P. Yaffe, Acting Director
Office of Appeals
National Labor Relations Board
Office of General Counsel
Washington D.C. 20570

Fax: 202-273-4283

September 3, 1998
Re: TWU, Local 225 (Gray Line)
Case No. 2-CB-16989

Dear Ms Yaffe:

I received you letter of refusal to pursue my complaint. Due to the fact that up to today I did not receive any proof of my wrongdoing from anyone, I am asking the National Labor Relations Board to provide me with a copy of the probative evidence of the employer. The last decision from Unemployment Insurance Appeal Board made by a judge disqualified Gary Line charges and indicated that he company had not documents to prove their accusations. Since the Boards investigation did not relate to my evidence

APPENDIX P (page 2 of 2)
Letter of petitioner issued to NLRB on September 3, 1998.

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against Gray Line and the fact that no one ever contacted me from National Labor Relations Office, about the status of my case it is clear to me that your investigation is incomplete and I would like also like to know the name of the officer who is responsible for the review of my appeal.

Hopefully, it will not be necessary for my attorney to communicate with the Board. Thank you for your time and attention. I am waiting for your response.

Sincerely,
"s/ /

Joanna Cieszkowska

APPENDIX R (page 1 of 2)
NLRB letter from September 18, 1998.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF GENERAL COUNSEL
FREEDOM OF INFORMATION OFFICE
Washington, D.C. 20570

DATE: September 18, 1998

Ms. Joanna Cieszkowka
77 Cooper Street, Apt. #2E
New York, NY 10034

Re: TWU, Local 225 (Gray Line)
Case No. 2-CB-16989

In response to your letter dated September 3, 1998, to the office of Appeals, received in this Office for reply on September 9, 1998, in which you request, with reference to Case No. 2-CB-16989, "National Labor Relations Board to provide me with a copy of the probative evidence, which indicates that 225 Local di not pursue my grievance to the arbitration because of sufficient evidence of the employer." I have construed your request to be one foe all documents in the file.

The main investigatory lie for this case is maintained in the Region. Under &102.117(c0(1) of the NLRB Rules and regulations, we are referring your request to the Regional Director, Region 2. The applicable time limit for response will be calculated from the date of receipt by the Regional

Office of your letter, which is being forwarded as of this date.

A search at Agency headquarters has revealed the existence of an Office of Appeals file. I would appear that he only documents contained in this file that would not be contained in the Region's investigatory file are routine administrative material such as routing slips, NLRB case handling forms, return receipt slips, and envelopes. These documents are not being forwarded to you with he understanding that you are not seeking administrative material. Should you desire for the foregoing documents, you may submit a written request tot his Office.

The undersigned is responsible for the above determinations. You may obtain a review thereof under the provisions of &102.117(c)(2)(ii) of the Board's Rules by filing an appeal with the General Counsel, National Labor Relations Board Washington, D.C. 20570, within 20 days (excluding Saturdays, Sundays and legal holidays)from the receipt of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Sincerely,

s" / ..... /

John W. Hornbeck
Freedom of Information Officer
Tel.: (202)-273-3840

cc: Director, Region 2
BMR: kmb
joanna.bmr

APPENDIX S (page 1 of 4)
Petitioner's original complaint to NLRB from June 25, 1998

Joanna Cieszkowska
77 Cooper St.. Apt. 2E
New York, NY 10034

Office of Appeals
National Labor Relations Board
Office of General Counsel
Washington D.C. 20570

June 25, 1998

Appeal from the decision made on June 1, 1998 by Daniel Silverman, Regional Director of National Labor Relations Board.

RE: TWU, Local 225 (Gray Line)
Case No: 2-CB-16989
Dear Sir,

As a member of the Polish Solidarity Union, I believed that he issues of human dignity, equality and safety are never negotiable.

Pursuant to the Union rules, I am seeking an appeal from a decision issued by Mr. SIlverman. I would like to use this opportunity to claim that during my three years of work with Gray Line New York, TWU Local 225 did not protect me as a member of that union and has refused to take my grievance regarding my discharge to Arbitration, as I have requested. I believe their actions are arbitrary and

discriminatory.

I have twenty years of work experience and I have never been accused of any wrong doing by anyone. During the last two years, I have been constantly harassed because of my Polish accent. In December 1997, I was called for a hearing without any submitted evidence. I received no previous warning in relation to this hearing.

Unfortunately, the Union did not form an execute committee and failed to ask Gray Line for permission to inspect the employee's record, although I had consistently asked for permission to review any evidence regarding my case.

During this hearing, which was held in the presence of Serge Gall, my Union Representative, I was threatened by Gray Line management. On the next day, (which was my day off) I was dismissed from work in order to make sure that I did not have chance to defend myself. Throughout the entire procedure of appealing, none off the Union Representatives ever responded to any of my questions regarding his matter , although I was receiving official letters about on-going, procedures. They responded to none of my questions regarding this matter. In addition, the Union has not yet responded to my claim that Gray Line owes me money from last season and refused to help me retrieve those wages in question. Since December 9th, 1997, TWU Local 225's lack of support remains unexplained.

Finally, I requested an executive meeting regarding my

situation. On February 10th, 1998, the Union decided not to pursue Arbitration with my termination for a second time. I was discredited as a tour guide. I have a reason to believe that I was set up by the company management with the apparent permission and participation of the Union. In fact, one union executive stated that these charges against me were trumped-up. He admitted this in front of several tour guides. If requested, I can produce a witness.

I have worked full-time for Gray Line for three years with innumerable hours of overtime which indicate their satisfaction with my work. However, at the end of each season, Gray Line has chosen to implement action to execute my termination under the pretense of my having a "very heavy" Polish accent. In 1996, this was the first time Local 225 was supporting Gray Line's arbitrary discrimination toward me and choose not to make the employer angry at my expense. At the same time, I received a lengthy private letter of support from Justin Ferate, Gray Line's recently departed Director of Tour Services, who had hired me.

Local 225's lack of action encouraged the company managers to increase their abuse. As a consequence, I was used as an example for company punishment. From december 1995, I was going through constant humiliation and unfair treatment.

In February of this year, I was able to prove Gray Line's unlawful practice and disqualification of my

unemployment benefits. The initial decision was overruled by a Judge.

Gray Line management ws never able to prove my responsibility for the accusations levied against me although I was punished with two months disciplinary suspension and five months denial of guiding assignments regardless of my rights and seniority as an employee and Union member.

Being aware of the discriminatory charges made against me, Gray Line has spoken with Ms. lenora James from the State Division of Human RIghts about making a financial settlement.

In consideration of the incidents mentioned above, I am asking the General Counsel to review the submitted documentation and make a decision which will support the truth. I still believe that the issue of human dignity, equality and safety are never negotiable.

Sincerely,
s" /...../
Joanna Cieszkowska

cc:
-Director, Region 2
-Mr. Richard Greulich, Transport Workers Union of America, Local 225, 10 Banta Place, Rm. 107, Hackensack, NJ 07601
-Ms. Lisa Sisenwein, Gray Line, New York

APPENDIX T (page 1 of 2)
Region2 NLRB letter from June 3, 1999.

NATIONAL LABOR RELATIONS BOARD
Region 2
26 Federal Plaza
New York, NY 10278-0104

June 3, 1999

Ms. Joanna Cieszkowka
77 Cooper Street, Apt. #2E
New York, NY 10034

Re: Freedom Information Act Request

Dear Ms. Cieszkowska:

This is response to your request, dated September 25, 1998 and received in this office on September 28, 1998, in which you asked to the "probative evidence, which indicates that 225 Local did not pursue my grievance to arbitration because of sufficient evidence of the employer", for charge filed in Case No. 2-CB-16989.

Enclosed are copies documents contained in the case file are disclosable. The case file identified above contains other disclosable documents including the charge, dismissal or denial letters, as well as routine administrative material such internal routing slips. NLRB case handling forms, return receipt slips and envelopes, which are not being forwarded at this time since your request does not specifically indicate your desire to obtain this information. Further, please be

advised that we are not providing documents submitted y you or addressed or copied to you during the investigation of this charge with he understanding that you already possess such a documents. If you wish to obtain any of this information, said documents, with appropriate deletions, will be forwarded to you upon written request.

The undersigned is responsible for he above determinations. You may obtain a review thereof under the provisions of &102.117(C)(2)(II) of the Board Rules by filling an appeal with the General Counsel, National Labor Relations Board, Washington, D.C. 20570, within 20 days(excluding Saturdays, Sundays and legal holidays) from the receipt of this letter. Any appeal should contain a complete statement of the reasons upon it is based.

I trust that the foregoing is responsive to your inquiry.

Very truly yours,

Daniel Silverman
Regional Director

Enclosures

APPENDIX U (page 1 of 4)
Decision of Unemployment Insurance Appeal Board Judge from February 28, 1998.

STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

ADMINISTRATIVE LAW JUDGE SECTION

PO BOX 697

NEW YORK, NY 10014-0697

ROBERT A LORENZO

CHILI ADMINISTRATIVE LAW JUDGE

JAMES BRETTON

ALTERIO COLETH

HENRY GREEN

JAYSON MYERS

LAURENCE ROSE

SENIOR ADMINISTRATIVE JUDGES

DECISION AND NOTICE OF DECISION

A.L.J. CASE NO : 098-03763

Mailed and FIled: FEB 26 1998

IN THE MATTER OF :

JOANNA CIESZKOWSKA GRAYLINE BUSLINES INC

APPENDIX U(page 2 of 4)
Decision of Unemployment Insurance Appeal Board Judge from February 28, 1998.

---

77 COOPER STREET #2E

NEW YORK, NY 10034

ATT:
PERSONNEL DEPARTMENT
1740 BROADWAY
NEW YORK, NY 10019-4370

CURTIS HARGER, ESQ
875 AVENUE OF AMERICAS
SUITE 500
NEW YORK, NY 100013507

RE: HARRINGTON INCORP
POST OFFICE BOX 1160
COLUMBUS OHIO 43218

Department of Labor Office: 517

Hearing requested: February 09, 1998

PLEASE TAKE A NOTICE that this decision has been duly mailed on the date listed above. If you appeared at the hearing and are not satisfied with this decision, you may appeal within TWENTY DAYS from the date this decision was mailed. Any party who failed to appear at the hearing

has the right to apply to the local office to reopen the case.

For the application to be granted, the party must apply within a reasonable time and must establish good cause for its failure to appear. READ IMPORTANT INFORMATION ON REVERSE SIDE.

FINDINGS OF FACT: A hearing was held at which the claimant and her attorney appeared and testimony was taken.

By initial determination of the local office, the claimant was disqualified from receiving benefits effective September 13, 1997 because she lost her employment through misconduct.

The claimant worked as a tour guide and lecture for the bus company herein for approximately three years until December 12, 1997. She last worked full time and earned $11.70 per hour. The claimant signed time sheets each day in which she wrote her start and end time for work. The claimant wrote the actual times she started and ended work She had no previous warnings related to time sheets. On December 12, 1997, the claimant was discharged on the basis that she she falsified her time sheets.

The claimant filed for unemployment benefits effective January 12, 1998.

APPENDIX U (page 4 of 4)

Decision of Unemployment Insurance Appeal Board Judge from February 28, 1998.

OPINION: Pursuant to Section 593.3 of Labor Law, a claimant is disqualified from receiving benefits after a loss of employment due to misconduct in connection with last employment prior to the filing of the claim benefits. The credible evidence in this case establishes that he claimant was discharged on the basis that she falsified her time sheets. The claimant's consistent and uncontroverted testimony establishes that she accurately reflected the time that she worked o her time sheets. There is no competent evidence otherwise. Therefore, I find that the claimant did not falsify her time sheets. Accordingly her employment ended under circumstances not constituting misconduct. The claimant is eligible to receive benefits.

DECISION: The final determination disqualifying the claimant because she lost her employment through misconduct is overruled. The claimant is eligible to receive benefits effective January 12, 1998.

/s/ ANDREA S ADDISON

Administrative Law Judge

(wcj 2/25/98)
wcj 25/98

APPENDIX V(page 1 of 2)
Decision of Department of Labor from February 6,1998.

NYS DEPARTMENT OF LABOR

247 WEST 54TH STREET

NEW YORK, NY 10019-5589

NEW YORK STATE DEPARTMENT OF LABOR

NOTICE ODF DETERMINATION TO CLAIMANT

DATE MAILED: 2/06/1998

SS# 165-64-6532 LO;517

PLEASE REFER TO THOSE ITEMS WHICH ARE SELECTED (X) BELOW AND READ THE BACK OF THIS FORM.

1. (XX) NOTICE OF DETERMINATION OF INELIGIBILITY OR DISQUALIFICATION

YOU ARE INELIGIBLE FOR UNEMPLOYMENT INSURANCE BENEFITS FOR THE PERIOD REASON INDICATED BELOW.

PERIOD

NO UNEMPLOYMENT INSURANCE BENEFITS WILL BE PAID TO YOU FOR THE PERIOD

BEGINNING 12/13/1997 UNTIL YOU HAVE SUBSEQUENTLY WORKED FOR AN EMPLOYER NOT LESS THAN 3 DAYS IN EACH OF 5 WEEKS AND EARNED AT LEAST 5 TIMES YOUR WEEKLY BENEFITS RATE SELF-EMPLOYMENT AND EARNINGS FROM SELF-EMPLOYMENT WILL NOT COUNT.

DETERMINATION

YOU LOST YOUR EMPLOYMENT THROUGH MISCONDUCT IN CONNECTION WITH YOUR LAST EMPLOYMENT.

REASON

YOU WERE DISCHARGED FOR FALSIFYING YOUR TIME RECORDS FOR THE PERIOD 11/17/97, 11/18/97, 11/21/97, 11/22/97, 12/2/97.

TO PROTECT YOUR RIGHTS READ THE BACK OF THIS FORM "s/ BY M. BELL

FOR THE COMMISSIONER OF LABOR